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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

LYNELL L. RINKER et al.,

Plaintiffs and Appellants,

v.

SIERRA COUNTY SHERIFF'S DEPARTMENT
et al.,

Defendants and Respondents.

C042150

(Super. Ct. No.
01AS06541)

Plaintiffs Lynell Rinker and her sons, Kevin and Mark Rinker, appeal from the judgment entered after the trial court granted summary judgment to defendants Lee Adams, Sierra County Sheriff's Department, and County of Sierra. Plaintiffs contend (1) the trial court erred in ruling that Deputy Sheriff Lee Adams did not have a special relationship with Lynell Rinker giving rise to a duty to protect her from an attack by her husband, Larry Rinker, while Adams acted as a "civil standby" during a meeting between the estranged spouses; (2) the court incorrectly determined that defendants were

immune from liability under Government Code sections 820.2 and 845; and (3) the court abused its discretion in excluding evidence and failing to grant a continuance pursuant to Code of Civil Procedure section 437c, subdivision (h). We shall affirm the judgment because plaintiffs have not provided us with a record adequate to review their claims of error.

DISCUSSION

The rules regarding a grant of summary judgment and subsequent appellate review are well-established. Summary judgment is properly granted where the moving party establishes "that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c); *Monteleone v. Allstate Ins. Co.* (1996) 51 Cal.App.4th 509, 514.)

In reviewing a grant of summary judgment, the appellate court makes "a de novo determination of whether there is a triable issue of fact and whether the moving party is entitled to judgment as a matter of law. [Citation.] In conducting our independent review of a grant of summary judgment, we apply the same analysis as the trial court. [Citation.] 'First, we identify the issues framed by the pleadings since it is these allegations to which the motion must respond [¶] Second[], we determine whether the moving party's showing has established facts which negate opponents['] claim and justify a judgment in movant's favor [¶] When a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue.'

[Citations.]” (*Mastro v. Petrick* (2001) 93 Cal.App.4th 83, 86-87; see also *Sacramento County Deputy Sheriffs’ Assn. v. County of Sacramento* (1996) 51 Cal.App.4th 1468, 1476; *Monteleone v. Allstate Ins. Co.*, *supra*, 51 Cal.App.4th at pp. 514-515.)

The first step in this analysis is critical because the allegations of the complaint delimit the scope of the issues on summary judgment. (*Couch v. San Juan Unified School Dist.* (1995) 33 Cal.App.4th 1491, 1499.) The reviewing court need not address theories that were not raised in the pleadings (*Williams v. California Physicians’ Service* (1999) 72 Cal.App.4th 722, 738), and a plaintiff may not defeat a summary judgment motion by producing evidence to support claims outside the issues framed by the pleadings. (*City of Hope Nat. Medical Center v. Superior Court* (1992) 8 Cal.App.4th 633, 639.)

Furthermore, a summary judgment motion “necessarily includes a test of the sufficiency of the complaint and as such is in legal effect a motion for judgment on the pleadings.” (*Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 682; see also *Hansra v. Superior Court* (1992) 7 Cal.App.4th 630, 639.) Where a complaint does not state a cognizable claim, it is not necessary to proceed to the second step in the three-step analysis, since a defendant has no obligation to present evidence to negate a legally inadequate claim. (*Hansra v. Superior Court*, *supra*, 7 Cal.App.4th at pp. 638-639.) ““Thus, if the reviewing court finds the complaint fails to state facts sufficient to constitute a cause of action as a matter of law, it need not reach the question whether plaintiff’s

opposition to the summary judgment motion raises a triable issue of fact.” [Citations.]” (*Id.* at p. 639.)

Accordingly, “[a]t the threshold of our de novo review of a summary judgment or summary adjudication granted on motion of the defense we [must] consider the scope of the complaint [citation] and also assess whether it sufficiently pleads the relevant theory or theories of recovery. [Citations.]” (*Capogeannis v. Superior Court* (1993) 12 Cal.App.4th 668, 673.)

Here, plaintiffs have failed to designate an adequate record to allow us to address their contentions. They did not request that the pleadings be included in the clerk’s transcript (Cal. Rules of Court, rule 5(a)), thereby rendering it impossible for this court to perform the first step of the aforementioned three-step analysis.¹ It is the responsibility of the appellant to provide an adequate record on appeal that clearly demonstrates error. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) Because plaintiffs have failed to provide such a record, we cannot consider the merits of their appeal. (*Ibid.*)

¹ In fact, plaintiffs’ appeal was dismissed on October 16, 2002, based on their failure to designate an appellate record. (Cal. Rules of Court, rule 8(a).) On December 27, 2002, we granted plaintiffs’ motion to reinstate the appeal on the condition that they forthwith file the designation of the record on appeal. Thereafter, they filed their notice designating the record on appeal, but did not designate the complaint or answer as part of the appellate record. Moreover, they neglected to include defendants’ statement of undisputed facts, or points and authorities, but defendants rectified this oversight.

DISPOSITION

The judgment is affirmed.

SCOTLAND, P.J.

We concur:

DAVIS, J.

MORRISON, J.